

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL M. SOARES,  
CDCR # F-39579,

Plaintiff,

vs.

DANIEL PARAMO, Warden;  
G. STRATTON, Associate Warden;  
M. FLYNN, Correctional Counselor;  
J. LEARD-HANSSON, Psychiatrist;  
E. PHAN, Psychologist,

Defendants.

Case No.: 13cv2971 BTM (RBB)

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION  
FOR APPOINTMENT OF COUNSEL  
[ECF NO. 58]**

Manuel M. Soares ("Plaintiff"), is a prisoner currently incarcerated at the California Health Care Facility in Stockton, California, and is proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983 [ECF Nos. 1, 9]. In his Complaint, he alleges that Defendants correctional and mental health care officials employed at Richard J. Donovan Correctional Facility, where Plaintiff was incarcerated in November 2012, violated his Fourteenth Amendment right to due process when they committed him

1 to a mental hospital, Atascadero State Prison. (Compl. 1-2, 3-5, 8, ECF No. 1.) Soares  
 2 filed a supplemental pleading, alleging Defendants violated his First Amendment right by  
 3 placing him in administrative segregation in retaliation for filing an inmate grievance  
 4 regarding his commitment proceeding and for filing another grievance alleging that  
 5 falsified documentation had been placed in his medical file. (Suppl. Compl. 9-10, ECF  
 6 No. 7.) On April 13, 2016, he filed a Motion for Appointment of Counsel pursuant to 28  
 7 U.S.C. § 1915(e)(1) [ECF No. 58].<sup>1</sup> For the following reasons, Plaintiff's Motion is  
 8 DENIED without prejudice.

### 9 **I. Legal Standard**

10 “The court may request an attorney to represent any person unable to afford  
 11 counsel.” 28 U.S.C.A. § 1915(e)(1) (West 2010). But “it is well-established that there is  
 12 generally no constitutional right to counsel in civil cases.” United States v. Sardone, 94  
 13 F.3d 1233, 1236 (9th Cir. 1996) (citing Hedges v. Resolution Trust Corp., 32 F.3d 1360,  
 14 1363 (9th Cir. 1994)). There is also no constitutional right to a court-appointed attorney  
 15 in § 1983 claims. Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing Storseth  
 16 v. Spellman, 654 F.2d 1349, 1353 (9th Cir. 1981)); accord Campbell v. Burt, 141 F.3d  
 17 927, 931 (9th Cir. 1998). Federal courts do not have the authority “to make coercive  
 18 appointments of counsel.” Mallard v. United States Dist. Ct., 490 U.S. 296, 310 (1989)  
 19 (discussing § 1915(d)); see also United States v. \$292,888.04 in U.S. Currency, 54 F.3d  
 20 564, 569 (9th Cir. 1995).

21 Nevertheless, district courts have discretion, pursuant to 28 U.S.C. § 1915(e)(1), to  
 22 request attorney representation for indigent civil litigants upon a showing of exceptional  
 23 circumstances. See Agyeman v. Corr. Corp. of Am., 390 F.3d 1101, 1103 (9th Cir. 2004)  
 24 (citing Franklin v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984)); Terrell v. Brewer, 935  
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 27 <sup>1</sup> This is Plaintiff's second request for court-appointed counsel. (See Pl.'s Mot. Appoint  
 28 Counsel, ECF No. 3.) The Court previously denied Soares's Motion for Appointment of  
 Counsel [ECF No. 9].

F.2d 1015, 1017 (9th Cir. 1991); Burns v. County of King, 883 F.2d 819, 824 (9th Cir. 1989) (“Appointment of counsel in civil matters in the Ninth Circuit is restricted to ‘exceptional circumstances’”) (quotation omitted). “A finding of the exceptional circumstances of the plaintiff seeking assistance requires at least an evaluation of the likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability to articulate his claims ‘in light of the complexity of the legal issues involved.’” Agyeman, 390 F.3d at 1103 (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)). “Neither of these factors is dispositive and both must be viewed together before reaching a decision.” Terrell, 935 F.2d at 1017 (quoting Wilborn, 789 F.2d at 1331).

## II. Discussion

Plaintiff seeks an appointment of counsel to assist him at a deposition. (Pl.’s Mot. Appointment Counsel 2, ECF No. 58.) Soares claims that he was given notice that Defendants will depose him on April 5, 2016. (Id.) Plaintiff argues that he “would be prejudiced in this type of procedure without an experienced Attorney present to preserve his rights in this matter.” (Id.) He does not explain why he would not be able to answer deposition questions in this case without the assistance of counsel.

Soares was able to participate pro se in a telephonic case management conference with this Court on October 9, 2015. (See Mins., Oct. 9, 2015, ECF No. 41.) During the conference, he could articulate his position and communicate about his claims. The Court finds no reason why Plaintiff would be unable to participate in a video deposition without being represented by counsel. Additionally, Plaintiff’s Motion was signed on March 23, 2016, but was not filed with the Court until April 13, 2016, ostensibly after the date Soares’s deposition was to be held. Thus, Plaintiff’s request for a lawyer to be present at his deposition is now moot.

The docket in this case demonstrates that Plaintiff is able to adequately litigate his claims by filing appropriate pleadings, motions, exhibits, notices, and requests with the Court. (See Compl., ECF No. 1; Suppl. Compl., ECF No. 7; Ex. H Suppl. Compl., ECF

No. 12; Objection, ECF No. 22; Resp. Opp'n Mot. Summ. J., ECF No. 24; Decl. Supp. Pl.'s Opp'n Mot. Summ. J., ECF No. 28; Notice Regarding Administrative Exhaustion, ECF No. 32; Mot. Leave Join/Amend, ECF No. 45; Pl.'s Mot. Summ. J., ECF No. 55.) As mentioned above, this is Plaintiff's second request for appointment of counsel. In denying Soares's first Motion for Appointment of Counsel, the Court noted that "Plaintiff's Complaint demonstrates an ability to articulate essential facts supporting his claims and to identify the relevant constitutional principles implicated." (Order Denying Mot. Counsel 5, ECF No. 9.) The Court found that Soares had "an adequate grasp of the facts supporting his case as well as the relatively straightforward issues involved." (*Id.*)

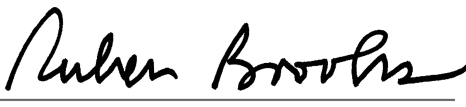
The Court acknowledges that any pro se litigant "would be better served with the assistance of counsel." *Rand*, 113 F.3d at 1525 (citing *Wilborn*, 789 F.2d at 1331). In this instance, however, Plaintiff has shown the ability to articulate his claims in this matter. This factor weighs against appointing counsel.

### **III. Conclusion**

For these reasons, Plaintiff's for Appointment of Counsel pursuant to 28 U.S.C. § 1915(e)(1) [ECF No. 58] is DENIED without prejudice.

### **IT IS SO ORDERED.**

Dated: May 17, 2016

  
 Hon. Ruben B. Brooks  
 United States Magistrate Judge